IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 33682 of 2006(I)

PETITIONER:

1. R.CHANDRABABU,
   MANAGER, HIGH SCHOOL BALARAMAPURAM,
   BALARAMAPURAM P.O.

2. THE SECRETARY,
   BALARAMAPURAM HIGH SCHOOL AGENCY,
   BALARAMAPURAM.

BY ADV. SRI.ABRAHAM VAKKANAL
SRI.PAUL ABRAHAM VAKKANAL
SRI.ARUL KUMAR.P

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
   THE SECRETARY, GENERAL EDUCATION DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT EDUCATIONAL OFFICER,
   NEYYATTINKARA.

3. T.S.ANIL,
   'SREYAS', VALIYAVILAKAM, BALARAMAPURAM.
   (CLERK, HS BALARAMAPURAM)

BY ADV. SRI.P.PARAMESWARAN NAIR
SMT.SREELATHA PARAMESWARAN NAIR
SRI.SUDEESH KUMAR RAMAKRISHNA
SRI.SUNIL KUMAR A.G
GOVERNMENT PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, ALONG WITH WPC NO. 16792 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the approved constitution of the Corporate Eductional Agency.

Ext.P2: True copy of the proceedings of the DEO, Neyyattinkara.

Ext.P3: True copy of the proceedings of the DEO, Neyyattinkara.

Ext.P4: True copy of the letter sent by the 3rd respondent & his brothers to 2nd petitioner.

Ext.P4(a): True copy of the certificate of the Village Officer, Pallichal.

Ext.P4(b): True copy of the death certificate of Sri.C.O.Sukumaran.

Ext.P5: True copy of the letter from 3rd respondent to the 2nd petitioner.

Ext.P5(a): True copy of the letter from 2nd petitioner to 3rd respondent.

Ext.P6: True copy of the letter from 2nd petitioner to 3rd respondent.

Ext.P7: True copy of petition sent by 3rd respondent to DEO, Neyyattinkara forwarded to 1st petitioner.

Ext.P8: True copy of the reply sent by the 1st petitioner to the DEO, Neyyattinkara.

Ext.P9: True copy of the hearing notice issued to the 1st petitioner by the DEO, Neyyattinkara.

Ext.P10: True copy of the notice by the Secretary of the Educational Trust for electing new Manager.

Ext.P11: True copy of the resolution of the Trust/Committee.

Ext.P12: True copy of the letter sent to 2nd respondent by 1st petitioner.

Ext.P13: True copy of the letter sent to 1st petitioner from the DEO, Neyyattinkara.

Ext.P14: True copy of the reply by the 1st petitioner to the DEO, Neyyattinkara.

Ext.P15: True copy of the argument notes given by Counsel for the petitioners to the DEO, Neyyatinkara.

Ext.P16: True copy of the proceedings of the DEO, Neyyatinkara.

Ext.P17: True copy of the petition before the DEO, Neyyattinkara.

Ext.P18: True copy of the order/proceedings of the DEO, Neyyattinkara.

Ext.P19: True copy of the 3rd respondent to the 1st petitioner.

Ext.P20: True copy of G.O.(RT)No.4681/06/G.Edn.

Ext.P21: True copy of G.O.(RT)No.4681/06/G.Edn. with endorsement by the DEO, Neyyattinkara.

Ext.P22: True copy of the minutes of the meeting of the Trustees to elect the Manager.

RESPONDENT'S EXHIBITS:

Ext.R3(b): True copy of the statement given by my brother, sister and mother.

Ext.R3(c): True copy of the letter of approval signed in the presence of the Vice Consul Consulate General of India, Houston (USA).

Ext.R3(d): True copy of the Gazette dated 23.8.2005.

Ext.R3(e): True copy of the format dated 27.3.2005.

Ext.R3(f): True copy of the letter of approval granted on 21.5.1985.

// True copy //

P.A. to Judge

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A.K.BASHEER, J.

W.P.(C)Nos.33682/06 & 16792/07

Dated this the 22nd day of June, 2007

JUDGMENT

Since the issues involved in these two writ petitions are closely interrelated, they are being disposed of through this common judgment.

2. Balaramapuram High School is being run by a Corporate Educational Agency known in the name and style of Balaramapuram High School Agency. Admittedly it is a Trust. The school was established by Sri.Ommini Nadar, who had three sons, namely Ramakrishnan Nadar, Ponnaiah Nadar and Sukumaran. All of them have passed away. While petitioner no.1 in writ petition no.33682/07 is the son of Ramakrishnan Nadar, petitioner no.2 is the son of Ponnaian Nadar. Respondent no.3 is the son of late Sukumaran. He has filed the other writ petition viz.W.P.(C)No.16792/07.

3. It is the admitted position that the lineal descendants of the founder are entitled to become members of the Educational Agency as per the clauses contained in Ext.P1 bye laws of the school. Ext.P5(a) is stated to be the legal heirship certificate

of late Sukumaran who passed away in 2005. It is also not in dispute that petitioners had been continuing as members of the educational agency along with Sri.Sukumaran till his death. On the death of Sukumaran, his legal heirs, namely wife and children, nominated respondent no.3 to represent them as the 3rd member in the educational agency.

4. But petitioners refused to admit respondent no.3 into the educational agency on the ground that there was statutory prohibition in his being a member, since he had been working as a clerk in the same school. The matter was taken up before respondent no.2 who by his Ext.P16 order held that respondent no.3 could be allowed to be a member of the educational agency so long as he continued to be a staff of the school.

5. Realizing the statutory bar against his eligibility to continue in the educational agency, respondent no.3 approached the Government and filed a petition for exemption from Rule 8 (2) of Chapter III KER. The Government passed Ext.P20 order granting exemption to respondent no.3 and allowing him " to become a member without detriment to his duties and

responsibilities as clerk of the school". The above order has been challenged in Writ Petition No.33682/06. They pray for issuance of a writ of mandamus or such other appropriate writ or direction to respondent no.2 to approve the re-election of petitioner no.1 as the manager with effect from May 21, 2006 till May 20, 2007.

6. Respondent no.3 has preferred W.P.(C)16792/07 praying for a direction to interdict the petitioners from making appointment to the post of HSA in Sanskrit in the retirement vacancy which has arisen in the school recently. He further prays for a direction to respondent no.2 not to grant approval for the appointment of HSA that may be made by the petitioners.

7. It is contended by learned counsel for the petitioners that Ext.P20 order issued by the Government granting exemption to respondent no.3 from the rigors of rule 8(2) of Chapter III KER is manifestly vitiated and illegal for reasons more than one. The primary contention is that the Government was not justified in granting exemption in favour of respondent

no.3, since such exemption will go against the purport and intent of the legislation. The other contention is that the Government had passed the above order without affording any opportunity to the petitioners to be heard. It is also contended by the learned counsel that invocation of power under Rule 3 of Chapter I was not at all warranted in the facts and circumstances of the case, particularly since no apparent hardship was discernible to the Government from the materials placed before it.

8. Per contra, it is contended by learned counsel for respondent no.3 that the power vested with the Government under the two provisions referred to above is wide enough, both in their scope and ambit, and therefore the Government was amply justified in exercising its discretion and authority. The rules do not provide that the Government ought to hear any “so called aggrieved person” before passing the order. Such a hearing is not warranted, particularly if the order to be passed by the Government is not likely to affect the right of other persons. It is pointed out by the learned counsel that the fact

that respondent no.3 had been working in the school as a clerk was duly considered by the Government. It had been made clear in Ext.P20 order that exemption was being granted to him without detriment to his duties in the school. So long as the duties of respondent no.3 as a member of non teaching staff in the school did not hamper or impede the smooth functioning of the school or its administration, there can be no room for propounding a theory that the power exercised by the Government was in violation of the principles of natural justice or that the Government lacked jurisdiction to pass the order.

9. As mentioned earlier, the legal heirs of late Sukumaran (who is none other than the uncle of the petitioners) had nominated respondent no.3 as the third member of the educational agency. It cannot be disputed that respondent no.3, as the legal heir of one of the three members who constituted the educational agency, has got a legitimate right in the property and management of the school. Respondent no.3, after his nomination, was entitled to be a member in the educational agency. This right of respondent no.3 is not infact disputed by

the petitioners. But their only contention is that respondent no.3 being a clerk in the same institution, it would not be proper for him to be a member of the educational agency. The Government thought otherwise. That is how the issue has now come up before this court.

10. It is contented by the petitioners that respondent no.3 is disqualified from being a member of the educational agency since he is working as a clerk in the school. But to a specific query as to whether respondent no.3 had any other disqualification, learned counsel for the petitioners answered in the negative. But according to the learned counsel, the amplitude of the power which is vested with the Government under Rule 8(2) Chapter III read with rule 3 of Chapter 1 KER being such, the Government ought to have refused to grant exemption. As mentioned earlier, the one and only objection raised by petitioners against the grant of exemption is that respondent no.3 is a member of the non-teaching staff in the school. I am unable to understand the logic or reasoning of the said contention. As could be seen from a perusal of the two

statutory provisions referred to above, the Government is left with the discretionary power to grant exemption in given circumstances. If the Government is satisfied that the operation of any rule under the Kerala Education Rules causes undue hardship to any individual in a given situation, the Government may dispense with or relax any particular rule, to such extent and subject to such conditions as it considers necessary, for dealing with the case in a just and equitable manner. Petitioners have not been able to point out how the decision of the Government had resulted in any injustice or inequity as far as they are concerned. Even at the risk of repetition it has to be stated that the only contention raised by the petitioners is that respondent no.3 cannot step into the educational agency because he happens to be an employee of the institution.

11. Curiously, petitioners have come out with a suggestion; to the legal heirs of late Sukumaran. Petitioners contend that the legal heirs could have nominated, either the widow or the daughter of late Sukumaran who are available in town. I fail to understand as to what is the locus standi of the

petitioners to make such a suggestion, even assuming they could be heard to say so. It is for the legal heirs to decide who among them is to be their nominee in the Agency. The two ladies might not have liked to come in to the Agency, obviously. In this context, it may also be noticed that late Sukumaran has two more sons apart from respondent no.3. One of them is working in Texas in USA and the other son is a teacher in the same school. So the choice obviously could have been either the clerk or the teacher working in the same school. Undoubtedly the wisdom of the legal heirs in choosing respondent no.3 as their nominee has to be respected. Petitioners cannot be heard to say that the legal heirs should have nominated a person who is not a persona non grata as far as they are concerned. I am unable to agree with the contention raised by the petitioners in this regard.

12. The other contention raised by the petitioners is that if respondent no.3 is allowed to be a member in the educational agency, he may interfere with the administration and day today affairs of the school which in turn may result in impeding the

smooth functioning of the institution. I am unable to agree with this contention either. As is evident, the exemption granted by the Government can only be as long as the Government decides it to be so. If there is any complaint against any member of educational agency who has obtained exemption under the provisions referred to above, it will be always open to the aggrieved person to alert the Government to get the order cancelled or modified further. The manager who is to be elected by the educational agency will be in charge of the affairs of the school. The powers of the manager are delineated under the KER. Therefore, there is no question of any intruder or third person meddling with the affairs of the institution. There are provisions under the KER which would take care of such situation. In any view of the matter, I am not inclined to accept the contentions raised by the petitioners against the suitability and eligibility of respondent no.3 to be a member of the educational agency on the sole ground that he is an employee of the institution.

13. The other grievance of the petitioners is that they were not afforded any opportunity by the Government to be heard before passing Ext.P20 order. I am unable to accept the contention that the Government ought to have necessarily heard the petitioners before granting exemption. The power to be exercised by the Government under Rule 3 Chapter 1 falls entirely within its discretion. Of course the Government should act within the limits or parameters envisaged under the general principles of natural justice. But the Government can always exercise its power of discretion. As noticed already, the petitioners have miserably failed to establish that they have been visited with any injustice, inequity or prejudice. It is upto the Government to decide in what all cases exemption should be granted. The Government has exercised that power keeping in view the entire circumstances of the case. Even assuming the petitioners were to be heard, the only objection that they could have raised in relation to respondent no.3 was that he is a member of the non teaching staff of the school. As observed by me earlier that reason alone cannot take away the right of

respondent no.3 to be a member of the educational agency and that too only to satisfy the petitioners. In any view of the matter, the order passed by the Government cannot be faulted.

14. Learned counsel has invited my attention to a few decisions of this court as well as that of the apex court. **[K.K.Prabhakaran V. State of Kerala (ILR 1982 (1) Ker. 397)**, **Amrik Singh V. Union of India (AIR 1980 SC 1447)**, **Reghunath Thakur V. State of Bihar (1989 (1) KLT SN 10]** But the dicta laid down in those decisions do not have any relevance or significance as far as this case is concerned. It is true that the Government has to exercise the power of discretion while under Rule 8(2) of Chapter III or Rule 3 of Chapter 1 after a due application of mind. Nothing is discernible from the materials available on record, particularly in the nature of the contentions raised by the petitioners, to show that the order is in any way vitiated. I do not find any reason to assume that the Government had passed Ext.P20 order in a mechanical manner without any application of mind. The facts speak otherwise. Therefore the petitioners are not

entitled to succeed.

15. In view of the above decision it necessarily follows that respondent no.3 will be entitled to be a member of the educational agency which in turn means that a fresh election to the post of manager has to be held. It will be open to the educational agency to convene a meeting of the Agency expeditiously in terms of the bye laws. The Departmental officers shall ensure that Ext.P20 order is implemented.

16. In the light of the order passed in writ petition no.33862/06, no orders are necessary in Writ Petition No.16792/07. It is therefore closed.

Writ petitions are disposed of in the above terms.

A.K.BASHEER, JUDGE

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